

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BETHAM AND LYNN
BETHAM,

Plaintiffs,

-against-

AVON PRODUCTS INC., et al.,

Defendants.

23-cv-4681 (AS) (SDA)

ORDER OF DISMISSAL

ARUN SUBRAMANIAN, United States District Judge:

“[S]ubject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power.” *Curley v. Brignoli, Curley & Roberts Assoc.*, 915 F.2d 81, 83 (2d Cir. 1990). Consistent with that proposition, Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

In the present case, jurisdiction is premised on diversity of citizenship, pursuant to Title 28, United States Code, Section 1332. Section 1332, however, requires “complete” diversity of citizenship, and diversity “is not complete if *any* plaintiff is a citizen of the same state as *any* defendant.” *St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply*, 409 F.3d 73, 80 (2d Cir. 2005) (emphasis added). Such is the case here, because the plaintiffs and at least three defendants are all citizens of foreign states. First Am. Compl. ¶¶ 5, 12, 17, 22. The Court therefore lacks subject matter jurisdiction over this action.

Accordingly, the complaint is hereby DISMISSED without prejudice for lack of subject matter jurisdiction. Any pending motions are moot and any conferences are canceled. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: September 12, 2023
New York, New York



ARUN SUBRAMANIAN
United States District Judge